

**KARNATAKA LOKAYUKTA**

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No: Compt/Lok/BD-276/2011/ARE(2)

M.S.Building,  
Dr. B.R. Ambedkar Veedhi,  
Bangalore,  
Date: 03-12-2014.

**REPORT U/S 12(1) OF KARNATAKA LOKAYUKTA ACT 1984**

Complainant Sri Gangadharaiah S/o Late Sri Kalaiah, R/o Kallupalya, Kothagere Hobli, Kunigal Taluk, Tumkur District in his complaint dated 10.11.2011 against:

- R-1 Sri S.P.Mudda Hanume gowda, Ex.MLA, Kunigal**
- R-2 Sri Shivaramaiah, S/o Boraiah, Ex. Member, Kunigal Panchayath & Tumkur Zilla Panchayath,**
- R-3 Secretary, Teredakuppe Grama Panchayath**
- R-4 Sri Chikka Chennappa, Taluk Executive Officer, Kunigal Taluk Panchayath**
- R-5 Sri C.K. Kumati Ramaiah, Taluk Executive Officer, Kunigal Taluk Panchayath**

has alleged that in Govt. Gomal Land bearing Sy.No. 26 of Chikka malavadi, Koththagere hobli, Kunigal Taluk measuring 33 acres 33 guntas, 9 acres were given to director, Central Silk Board in the year 1984-85 by the Government, 4-00 acres were granted for formation and distribution of Ashraya Sites to poor and minorities, 2-00 acres were granted to Mohan char S/o Venkatachar, 1 acres 10 guntas were granted to K.T. Rangappa S/o Topaiah as they were bagar hokum saguvalidars, and excluding the above 16 acres 10 guntas, still 14 acres 23 guntas were available for disposal. He further alleged that six persons applied in form 50, seeking regularization of their unauthorized occupation before the regularization Committee and they are pending in **LND.RUC.KTR.127/1991-92**; that six more persons applied in Form 53 seeking grant and those applications are pending in **LND.RUC.KTR.168/1998-99** and out

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of the above applicants, some are not cultivating and some have no heirs. He also alleged that revenue inspector had reported that one Anathanamma W/o Thimmaiah, Hanumanthaiah S/o Chikka Hanumaiah and Hanumaiah S/o Yemmallappa who had applied in Form 50 are eligible for grant and on account of the land grant committee not taking decision in time, the said Ananthamma and Hanumanthaiah filed writ petition before Hon'ble High Court of Karnataka, seeking direction to the Assistant Commissioner, Tumkur to grant their application; that the land grant committee members and Secretary, on account of political illwill and for self benefit, instead of granting the lands to the above beneficiaries, in order to issue Hakku Patras under Ashraya Scheme, to gain political advantage during forthcoming assembly election, illegally issued 350 Hakku Patras in favour of unidentified and undeserving rich people and political workers in utter violation of land revenue rules and those Hakku Patras bear the signature of two Taluk executive Officers(Respondents 4 & 5) and the signature of R-1 who was then MLA of Kunigal. He also alleged that in the land, in respect of which those Hakku Patras are issued, no sites are formed and on the other hand, agricultural operations are being carried on by the Bagarhukumdars. The complainant thus requested for taking up investigation and suitable action against the respondents.

After taking up the investigation on the basis of approved scrutiny note dated 05.05.2014, when notices were caused to the respondents, no comments were sent by respondents 1, 4 & 5. R-5 Kumati Ramaiah was reported to be bedridden due to paralytic stroke.

R-2 Shivaramaiah in his comment dated 12.06.2014 stated that he is presently not a member of either Tumkur Zilla Panchayath or Kunigal Taluk Panchayath and he has no concern with the decision

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taken by the land regularization committee presided over by the MLA. He however denied the allegations made against him.

R-3 namely Secretary, Teredakuppe Grama Panchayath in his comments dated 07.06.2014 pleaded that there is no valid issue of Hakku Patras in respect of land in Sy.No. 26 of Chikka Malalavadi during 1984-85 and there are no documents available in the Grama Panchayath with regard to, issue of Ashraya sites, Hakku Patras. HE further mentioned that issue of 350 sites Hakku Patras by Ashraya Samithi in respect of 8 acres in Sy.No 26 of Chikka Malavadi has not come to the knowledge or notice of the Panchayath and no such proposal had been made by the Panchayath.

When copies of comments of respondent 2 & 3 were sent to the complainant for his reply, he did not send the same.

Chief Executive Officer, Tumkur Zilla Panchayath sent his report on 24.06.2014 stating that during the year 1984-85, no Hakku Patras concerning Sy.No. 26 of Chikkamalalavadi had been issued validly and legally by the Grama Panchayath and there was no proposal made by the Panchayath for grant and distribution of sites under Ashraya Scheme and no land was handed over to Panchayath in that regard by the Tahsildar, Kunigal. He further reported that the Ashraya Committee in its Meeting held on 22.10.2013 had resolved to distribute Ashraya sites and that R-1 was its chairman and there were four other members of the Samithi. The report also mentions that in the Pehani of Sy. No. 26 of Chikkamalalavadi, there is an entry that six acres in the said sy. No. were reserved for the distribution of Ashraya Sites and the list of 350 beneficiaries bears the signature of present R-1 and also either R-4 or R-5. According to the report, there was no transfer of 8-00 acres of land in Sy.No. 26 by the Tahsildar, in favour of Taluk Executive Officer, Kunigal Taluk Panchayath.

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According to Letter No. Ashraya:CR:31/2013-14 Dated 16.01.2014 of Tahsildar, Kunigal to the Executive Officer, Taluk Panchayath, Kunigal, the possession of 8-00acres of land in Sy.No. 26 of Chikka Malalavadi was given by the Tahsildar to the Taluk Panchayath, Kunigal on 06.03.2014 as per Tumkur Deputy Commissioner's order **LND (TMK) SR: 36/2003-04 dated 23.02.2004** and Govt. circular No. RD:53:LGT:2003 Dated 22.08.2003, for distribution of house sites under Ashraya Scheme to the site less persons as per Rule 18(A) of Karnataka Land Grant Rules 1969 and even before the handing over of possession of the said land, the Junior Engineer, Taluk Panchayath, Kunigal and Taluk Executive Officer, Taluk Panchayath, Kunigal prepared lay out plan on 19.02.2004 and the list of beneficiaries was signed by the Chairman of the Ashraya Samithi namely Kunigal MLA(R-1) and site distribution was shown to have been made in favour of 350 persons and none of the allottees are in possession of said 8-00acres. According to the said letter, the said layout plan and also the list of beneficiaries is illegal. The Possession of 8-00acres was given to the Taluk Panchayath on 06.03.2004 subject to the conditions that fresh list of eligible beneficiaries is to be prepared and allotment are to be made within six months from 06.03.2004 and in case the Taluk Panchayath failed to do so, the land will be resumed to revenue department.

Copy of letter dated 19.07.2013 of Assistant Commissioner, Tumkur to Deputy Commissioner is to the effect that no land was handed over to the Grama Panchayath, and the steps taken by the Ashraya Committee is wholly illegal and done with ulterior motives. The Deputy Commissioner was requested to verify the list of site less persons to be submitted by the Grama Panchayath, identify the land required for sites and reserved the same. The C.E.O. was to be requested to take action against the erring officials.



As far as regularization of unauthorized occupation of Smt. Ananthamma and others, is concerned, under the Karnataka Land Revenue(Regularization of unauthorization of land)Rules 1970 framed in exercise of power under Sec. 197 of Karnataka Land Revenue Act 1964 and brought into force as per notification No. nil dated 11.06.1970 published in Karnataka Extra-ordinary gazette dated 18.06.1970 ,the Deputy Commissioner is the authority to pass orders on application for regularization of unauthorized occupation. The said application is to be made as per Rule 3 of the said rules by the persons in unauthorization of govt. land. Rule 4 prescribes the procedure to be followed for the disposal of such application. Upon receipt of such application under Rule 3, the Deputy Commissioner has to verify the correctness of the particulars given in the application of the applicant, by holding such enquiry as he deems fit and determine the extent of land that may be granted and the price that may be charged and publish notice in Form 2 in the Village Chavadi in which the land concerned is situated and also in the Panchayath office, calling for objection to the proposed grants, and after considering the objections if any, received, and holding such enquiry as may be necessary, pass orders regarding the extent of land which can be granted and the price. Thereafter the applicant is to be notified as per Sub Rule (3) of Rule 4 of the said rules to deposit the price. If the applicant expresses his willingness and deposits the price, the D.C. has to pass the grant order under Sub Rule(4) of Rule 4 of the said Rules. According to Rule 5 of the said rule, land reserve as Gomal, Gundu thopu, Tank bed, Food karab, Karab halla, dates reserved or land required for public purpose cannot be granted under the said Rules. Said rule 5 is subject to a proviso. In case of Gomal land, grant can be made where there is surplus grazing field for the concerned village. According to proviso, the requirement of grazing field per 100 heads of cattle is 12 hectares (30acres)

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Under Karnataka Land Grant Rules 1969, a committee called Taluk Consultative Committee constituted under Rule 24, is only a recommending body. But, the Authority to make grant is of the revenue officers of the concerned Taluk. In the present case, the said committee chaired by 1<sup>st</sup> respondent in its meeting held on 27.10.2003, proceeded to reject the applications of Smt. Ananthamma and 12 others even though, as per surveyor's report, the said Ananthamma, one Hanumaiah S/o Yellappa, & Hanumanthaiah, S/o Chikka Hanumaiah were cultivating different portion of Sy.No. 26 of Chikka Malalavadi. Hon'ble High Court of Karnataka in its order dated 20.04.2001 in W.P. NO. 17381-17382/2001 had directed the revenue authorities to consider and dispose of the application, of said Smt. Ananthamma and another within four months. The Legality and propriety of the decision of the committee could be challenged under the Karnataka Land Revenue Act 1964. The complainant is not an aggrieved party as regards the rejection of application for grant. The grievances made against the respondents 1, 4 & 5 are prima facie substantiated.

Govt. of Karnataka issued guidelines governing the grant of sites under Ashraya Yojane, as per Govt. order NO. UD: 202: HAH: 2014 dtd. 30.08.2014. According to the guidelines, a person seeking allotment of Ashraya sites must be a woman (married or single). Ex service men, senior citizens, physically handicapped persons and widowers will also be eligible to seek allotment of house sites under this scheme. The beneficiaries must be resident of concerned rural areas. His or her annual income should be below Rs. 32,000/- The family of the beneficiaries must be socially or economically backward, not owning any house or sites either in the name of beneficiaries or any of the family members of the beneficiaries' anywhere in Karnataka. Such beneficiaries must have not been allotted any site or house under any of the benevolent schemes of the Government.

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Under this scheme, every Grama Panchayath has to prepare list of houseless and site less people and the said list should be revised every year before the end of April and sent to the Taluk level Housing committee. The Taluk Level Housing Committee will be chaired by the Asst. Commissioner. The other members of the Committee are the Tahsildar, Assistant Director of Land Records and Executive officer of Taluk Panchayath. It is the duty and responsibility of the said committee to cross check the list of house less and site less people received from the village Panchayath and finalize the list of beneficiaries. In case, the Ashraya sites are to be formed in Govt. land, the said committee has to send the proposal to the Deputy Commissioner for the grant of the said land. In case the said sites are to be formed in private land, and its owners are prepared to sell the same at the price fixed by the Govt., the meeting proceedings along with the consent letter of the said land owners has to be sent by the Taluk level committee to the District purchase committee along with proposal. In case, the private land owners are not agreeable to sell the land at price fixed by the Government, the Taluk Level Committee has to make a scientific assessment to determine the land value by obtaining the sales statistics and make a proposal to the District Purchase Committee and in that event, steps are to be taken for acquisition of such lands under the Karnataka Acquisition of lands for grant of house sites Act 1972 and a proposal in that behalf is to be sent to the Deputy Commissioner. The said guidelines also set out the parameter for the selection of the land.

The proposal which is to be sent in respect of Govt. land must be accompanied by the check list , Grama Panchayath resolution, list of eligible site less people, the sketch of the land in which the Ashraya sites are to be formed, the RTC of the said land and the report of the Subcommittee. All these things are to be sent by the Executive Officer of the Taluk Panchayath to the Tahsildar. Within

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15 days thereafter, the Tahsildar has to send the proposal to the Asst. Commissioner who in turn, shall forward the same to the Deputy Commissioner. The Deputy Commissioner is competent to make a grant of building site under Rule 18 of the Karnataka Land grant rule 1969 after reserving 18% of the sites available for the members of Scheduled casts and scheduled tribes. The term "Building site" is defined by Sec. 2 (2) of Karnataka Land Revenue Act, "as a plot of land held for building purposes whether or not any building is actually erected thereupon. It includes open ground, or courtyard enclosed by or adjacent to any building erected thereupon."

After the land is granted by the Deputy Commissioner, concerned Gram Panchayath has to make online proposal.

The sites in the Government land are to be formed under the banner "Grameena Ashraya Yojane- Grama Panchayath....." The said sites are to be formed out of the grants made by the Corporation. After the formation of the sites, the allotments are to be made and thereafter, the Hakku Patras are to be issued. In the present case, no such steps were taken. Under Govt. order No.HUD 535 KHB 91 dated 04.11.1991, the family annual income to be eligible to get the sites or houses under the Ashraya scheme was Rs. 8,400/-p.a. According to this Govt. order, while selecting the beneficiaries for allotment of houses or distribution of sites, the Authorities concerned had to ensure that 18% of the beneficiaries belong to SC/ST category. Further 10% of the houses/sites should be reserved for persons belonging to nomadic and semi-nomadic tribes subject to the availability.

The list of beneficiaries prepared under the signature of respondent no.1 & the Executive Officer of the Taluk Panchayath comprises residents of different villages. The list does not comprise 18% of Scheduled casts and Scheduled tribes' beneficiaries. Even before the Govt. land was handed over to the Taluk Panchayath, the

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Hakku Patras have been issued under the signature of Respondent no. 4 or 5 on 04.02.2004. The proceedings of the Meeting dated 08.02.2001 of Ashraya Committee chaired by respondent no.1 who was then MLA of Kunigal would indicate that the resolution for granting Ashraya sites was made in haste in view of Chief Minister's ensuing visit to Kunigal. Though the sites under Ashraya Yojane were to be formed in Govt. land in sy. No. 26 of Chikkamalavadi, Kotthagere hobli, Kunigal Taluk, in the list of 259 beneficiaries there are hardly 45 persons who are residents of Chikkamalalavadi, the others are all outsiders. In the redone list of 350 beneficiaries prepared under the signature of 1<sup>st</sup> respondent and the Executive Officer of Taluk Panchayath, there are hardly 45 persons who are residents of Chikkamalalavadi. The others are outsiders. **It can thus, be seen that the complaint allegations are well founded.**

1<sup>st</sup> respondent who was MLA of Kunigal Assembly constituency during the year 2003-04 is not MLA of said constituency at present. According to Article 188 of Constitution, every member of a Legislative Assembly has to make and subscribe before the Governor or some person appointed in that behalf by the Governor, an oath or affirmation according to the form set out for the purpose in the 3<sup>rd</sup> schedule. Form VII (B) of 3<sup>rd</sup> schedule prescribes the following format of oath or affirmation to be made by the Legislature of a State.

"I, A. B. having been elected (or nominated) a member of a Legislative assembly (or Legislative Council) do swear in the name of God/ solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by-law established, that I will uphold the sovereignty and integrity of India and that I will faithfully discharge the duty upon which I am about to enter."





Our Constitution should not be construed as mere Law, but as the machinery by which Laws are made. It defines the relation between:

- a. Various institutions and areas of Government.
- b. Executive, the Legislature and the Judiciary
- c. Central Government, State Governments and the Local Governments
- d. People and the Governments &
- e. Political social and economic issues.

The 1<sup>st</sup> respondent as a Public servant and people's representative failed to act in accordance with Law. So also respondents 4 & 5 who are public servants failed to act in accordance with Law.

U/Sec. 13(1) of Prevention of Corruption Act, 1988, a public servant is said to commit an offence of criminal misconduct, if he, by abusing his position as a public servant, obtains for himself or for any other persons, any valuable thing or advantage. Such criminal misconduct is punishable u/Sec. 13 (2) of P.C. Act 1988. Although the said criminal misconduct cannot be a subject matter of investigation by Hon'ble Lokayukta under the Karnataka Lokayukta Act 1984 in view of the bar u/Sec. 8 of the Act, the complaint can be referred to Addl. Director General of Police, Karnataka Lokayukta, B'lore for investigation and further action with regard to the acts of respondents 1, 4 & 5 in the preparation of the list of beneficiaries contrary to Law, by abusing their official position as public servants, to promote their self interest and thereby committing criminal misconduct punishable u/Sec. 13 of the Prevention of Corruption Act 1988.

Hence, a report is made to the Principal Secretary to Govt. of Karnataka, Revenue department with recommendation to take corrective action as regards the decision taken by the land grant committee of which R-1 was the chairman, in the matter of

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regularization of unauthorized occupation of Smt. Ananthamma & others.

A report is also made to the Principal Secretary to the Govt. of Karnataka, Rural Development and Panchayath Raj, with recommendation to take disciplinary action against Respondent 4 & 5 who were responsible for issuing illegal Hakku Patras in respect of land in Sy. No. 26 of Chikka Malalavadi and the persons who prepared fake list of beneficiaries of Ashraya sites.

The Competent Authorities - (1) Principal Secretary to Govt. of Karnataka, Revenue department (2) Principal Secretary to the Govt. of Karnataka, Rural Development and Panchayath Raj, is require to send compliance report within three months from the date of receipt of reports under Sec. 12(1) of Karnataka Lokayukta Act 1984.

/s/ Bhaskar Rao  
-4/12/04

**(Justice Dr. Y. Bhaskar Rao)**  
Lokayukta-State of Karnataka,  
Bangalore.